

1 did they tell you that they would require you to  
2 maintain?

3 THE WITNESS: There wasn't a  
4 specific time on this. They just -- they called  
5 and said that they -- we need to be mindful that  
6 there are regulatory obligations that had to be  
7 done before we could terminate, and we just  
8 messaged back we're very well aware of our  
9 obligations under that.

10 THE COURT: That's a bad phone  
11 call; right?

12 THE WITNESS: No. That's not a  
13 very good phone call, you're right.

14 MR. SHAPIRO: Your Honor, I have  
15 just a couple of questions on redirect.

16 THE COURT: We typically don't do  
17 that. Was there something new that was raised.

18 MR. SHAPIRO: Just after  
19 Mr. Karotkin asked a question and the response, I  
20 wanted to follow-up on that response.

21 THE COURT: All right.

22 BY MR. SHAPIRO:

23 Q. Mr. Karotkin asked you whether there was  
24 over capacity and your response was there was?

1 A. Mm-hmm.

2 Q. Is that right?

3 A. Well, in general, across the network, but  
4 I think specifically on a circuit by circuit, I  
5 mean fiber-by-fiber basis, I can't tell you where  
6 there may be capacity or not.

7 Q. So the network is billed; correct?

8 A. That's correct.

9 Q. And the cost of continuing the network is  
10 basically maintaining the network; is that right,  
11 the network that Winstar would use?

12 A. Yes. There's maintenance, obviously, and  
13 there's cost associated with maintaining it.

14 Q. Absolutely there are costs, but every  
15 dollar of revenue that you generate from Winstar,  
16 that's a dollar that you wouldn't see if Winstar  
17 was off this system; correct?

18 A. If we're paid for it.

19 Q. Assuming you're paid for it?

20 A. Yes.

21 Q. Assuming you are paid for --

22 A. There would be a dollar revenue.

23 Q. Incremental costs are not very great in  
24 continuing to maintain that because you otherwise

1 still have to maintain that network whether or not  
2 Winstar is still on the network; correct?

3 A. Yes.

4 Q. So in trying to answer the question that  
5 the judge asked you about what the margins were,  
6 it would suggest that the margins are quite high  
7 for the services that you provide to Winstar; is  
8 that not right?

9 A. Well, again, I can't speculate on the  
10 pricing that's given to the -- in some comparison  
11 to our cost, that's a complete marketing cost  
12 analysis that I'm not aware of.

13 Q. And how much did you say about per week  
14 every week is incurred on the on-net services to  
15 Winstar?

16 A. It's -- right now the run rate is about,  
17 roughly, 630,000 a week.

18 Q. So it's about \$2.4 million a month?

19 A. Yes.

20 Q. On off-net service?

21 A. On-net service.

22 Q. On-net services. How much for off net,  
23 about a million or so?

24 A. No, that was the total. It's about --

1 it's a million total, so 630 plus the hundred, so  
2 350.

3 Q. So on a general run rate, it's about \$3  
4 million a month that Williams would be paid by  
5 Winstar if it was being paid currently?

6 A. No, four million.

7 Q. Four million?

8 A. Four million.

9 Q. So, approximately, \$4 million?

10 A. That's correct.

11 Q. And were you paid in April?

12 A. Yes, I believe so.

13 Q. Were you paid in May?

14 A. I believe so.

15 Q. June?

16 A. I believe so. Yes, sir.

17 Q. Well, you testified that the only monies  
18 you have not been paid for so far were, I guess,  
19 the last couple weeks?

20 A. The last -- well, the last couple  
21 months.

22 The 3.9 I talked about included  
23 prior month invoices.

24 Q. So what month did they stop paying you?

1           A.     July, August, Septemberish.

2           Q.     Well, when you say not payment, you were  
3     rolling \$14 million of it into the DIP; that's  
4     what's contemplated?

5           A.     That is correct.

6           Q.     It wasn't that they weren't paying you,  
7     that was contemplated by your business  
8     arrangement; correct?

9           A.     I was referring to the off-net charges  
10    that were not paid.

11          Q.     The off net you're owed approximately  
12    seven million and that constitutes a number of  
13    months?

14          A.     That's correct.

15          Q.     But in total, it looks like you're paid,  
16    roughly, \$4 million a month for, five plus or  
17    minus months?

18          A.     Right.

19          Q.     So you've been paid, approximately, 20  
20    million to date?

21          A.     That could be accurate.

22          Q.     And the margins as we talk about to be  
23    quite high given the way the incremental cost  
24    works?

1 MR. TURNER: Asked and answered.  
2 This witness isn't qualified to answer the  
3 margins.

4 THE COURT: If you don't mind.

5 THE WITNESS: I don't know the  
6 answer.

7 MR. SHAPIRO: Okay. That's all I  
8 have, sir.

9 THE COURT: All right. Thank you.  
10 You may step down.

11 Any other witnesses in opposition  
12 for the motion?

13 (Silence.)

14 THE COURT: All right, then. We'll  
15 close the record.

16 Are there any rebuttal?

17 MR. ALBALAH: I think it's on the  
18 record, if it's not, there's 38 million -- well,  
19 there's \$38 million representing the purchase  
20 price in McDermott's escrow account now, plus  
21 November another \$30 million representing \$30  
22 million that we've been talking about.

23 So McDermott's escrow account is  
24 holding \$68 million.

1 THE COURT: I think the record is  
2 clear on that.

3 Is there any other -- so there's no  
4 rebuttal?

5 MR. SHAPIRO: No rebuttal, Your  
6 Honor. I think at this point the record is closed  
7 from the Debtors' standpoint.

8 THE COURT: Anything else you want  
9 to tell me Mr. Shapiro about your motion?

10 MR. SHAPIRO: No, Your Honor. I  
11 think the only issue with respect to the testimony  
12 that was put on is that the witness did not  
13 testify whatsoever about the bids, about the sale  
14 auction, about the asset purchase agreement, or  
15 anything that relates to this sale.

16 The only thing the witness testified  
17 to is that Williams is owed money, and that  
18 Williams has made a lot of money so far.

19 Obviously they're owed money and  
20 that is absolutely a fact. And Winstar did not  
21 pay them that money.

22 And we know the other fact is that  
23 the account is entered into. Williams will begin  
24 to be paid again, as the buyer has said in their

1 management agreement.

2 That's all we know.

3 MR. JONAS: There is something I do  
4 want to say.

5 THE COURT: All right.

6 Mr. Jonas, could you identify  
7 yourself for the record and -- yeah.

8 MR. GWYNNE: Is the record open  
9 again, Your Honor? He's going to testify as a  
10 witness?

11 THE COURT: I assume he's going to  
12 argue as the buyer, unless he wants to testify.  
13 I'm going to get that clear.

14 MR. GWYNNE: Because if he's going  
15 to make factual assertions.

16 THE COURT: He will have to be  
17 sworn and appear as a witness.

18 As a procedural question, Mr. Jonas,  
19 is there something that you wanted to testify to  
20 which would require you being put under oath, or  
21 is there something as the buyers' representative  
22 that you wanted to tell me by way of what we call  
23 argument?

24 In other words, if you're trying --



1 MR. JONAS: No, I want to say  
2 something under oath.

3 THE COURT: Pardon me?

4 THE WITNESS: I want to testify to  
5 something.

6 THE COURT: You want to testify?

7 MR. JONAS: I affirm.

8 THE COURT: Let me -- I get the big  
9 dollars here for that.

10

11 HOWARD JONAS,

12 the deponent herein, having first  
13 been affirmed, was

14 examined and testified as follows:

15 THE COURT: You can take a seat.

16 MR. ALBALAH: Your Honor, before  
17 this starts, could I have a moment with my client?

18 THE COURT: Yes.

19 (Following a discussion held off the  
20 record:)

21 MR. ALBALAH: All right. I just  
22 want to note Mr. Jonas is the chairman of the  
23 Board of IDT Corporation. He is about to make a  
24 statement under oath in terms of the record.

1                   Mr. Jonas is not an officer, a  
2 director, or doesn't have any managerial capacity  
3 with respect to the buyer. So therefore, I don't  
4 believe he should be subject to cross-examination  
5 regarding the buyer.

6                   THE COURT:   Well, that would be  
7 something that would be highly unusual, so he will  
8 have -- if he testifies under oath as to factual  
9 assertions he'd have to be subject to  
10 cross-examination.

11                  MR. ALBALAH:   He is testifying  
12 under oath with respect to one very narrow issue  
13 which I can tell Your Honor now or Mr. Jonas is  
14 competent to tell Your Honor himself.

15                  THE COURT:   Well, when a witness  
16 takes the stand, they open up their credibility.

17                  MR. ALBALAH:   May I have one more  
18 moment?

19                  THE COURT:   Sure.   Ready,  
20 Mr. Jonas?

21                  MR. JONAS:   Yes.   We are trying to  
22 make everybody whole and this was our thinking.  
23 Our thinking was that in the worst case analysis  
24 if we were to send out termination notices to all

1 of the clients tomorrow, hypothetically, and the  
2 run rate of Winstar is about \$30 million, the  
3 amount of cost that Winstar runs is about \$30  
4 million.

5                   There will be a good chance that a  
6 lot of clients wouldn't pay us because we  
7 terminated them. It's very hard to collect money  
8 from clients you terminated.

9                   So we thought that \$30 million would  
10 be a reasonable amount to put into escrow because  
11 that's what we were sort of thinking about doing.

12                   But then two things happened. One  
13 is that we thought that we would like to try to  
14 run the company. We think that we can make the  
15 company profitable eventually.

16                   The second thing is the FCC came to  
17 us and said that you can't turn people off in 30  
18 days. You might have to spend a longer amount of  
19 time so you can send them a notice that you want  
20 to turn them off, but they can come to us and they  
21 could say that's not fair. You know, we should be  
22 allowed to be kept on longer.

23                   And with the GSA in particular, we  
24 agree, even though we don't intend to turn them

1 off, we intend to grow the service, but we told  
2 them specifically that we would give them 60 days'  
3 notice if we were going to turn them off because  
4 that's what they asked for.

5                   And you know we're not trying to,  
6 like, make the government have no phone service.  
7 I mean, we're long-term people in this business  
8 and there's not one person at that table -- I  
9 mean, they don't know it because they're the  
10 lawyers, but I mean except for the one that's  
11 bankrupt, there's nobody at that table that we  
12 don't do millions of dollars' worth of business.  
13 Some of those people we do tens of millions of  
14 dollars of business with.

15                   So I thought that the right thing  
16 would be instead of putting \$30 million in escrow  
17 to raise it and put \$60 million in escrow. And I  
18 thought that that would make everybody more  
19 comfortable.

20                   And we have no intention, you know  
21 all of the questions here are, you know, like that  
22 we're not going to pay the bill or something.  
23 We've been in business for more than 10 years. I  
24 know it's not the parent company, but we've never

1 not paid a bill.

2           There's not one person at that table  
3 that could tell us anything that IDT, you know,  
4 has been defunct or that we've ever had to be  
5 brought to court by any carrier or anything like  
6 that.

7           So in order to make this thing  
8 easier for the Court, I'm willing to put another  
9 \$30 million into -- to infuse another \$30 million  
10 into the entity, so that nobody should have to  
11 worry about what's going to happen. And that's  
12 what I wanted to say.

13           You know, because my counsel doesn't  
14 think that's a very bright thing to say, you know  
15 if you're going to get up by only putting 30, why  
16 do you have to put in 60, but you know we're going  
17 to stick by the commitment we made to the FCC  
18 regardless, so what's the difference.

19           THE COURT:    So you're making that  
20 escrow cash available to pay your bills and you  
21 understand that you're going to prepay them.

22           MR. JONAS:    Yes.

23           THE COURT:    And you understand that  
24 if you don't prepay them, that there may be a

1 provision in this transaction that says that the  
2 folks at that table could come right into court  
3 and at least, excluding the FCC, cause the Court  
4 to say that they don't have to give you service  
5 anymore because you weren't paying them?

6 MR. JONAS: Let me tell you two  
7 things. First thing, I'm going to pay them. I  
8 understand that I'm going to pay them day one.

9 Number two was that this may be a  
10 separate entity, but what the name -- we're the  
11 ninth largest phone company in the country. I  
12 have to deal with the FCC every day on a whole  
13 variety of issues, and the FCC person, I don't  
14 know if she was here before.

15 Yeah, the FCC person could testify  
16 that we're in very good standing with the FCC. We  
17 comply with everything all over the world. I  
18 mean, we do all sorts of different things that  
19 we're required -- that we require their approval  
20 for.

21 And the last thing I'm going to do  
22 is like screw around, and like you don't want to  
23 have an enemy in the FCC, even if the shell has  
24 nothing left in it. They could get you back.

1 THE COURT: All right. Is there  
2 any examination by the objectors?

3 MR. TURNER: Thank you, Your  
4 Honor. Andrew Turner for Williams  
5 Communications.

6 BY MR. TURNER:

7 Q. Sir, I'm sorry, I missed your identity  
8 for the record.

9 A. My name is Howard Jonas. I am the  
10 chairman of IDT.

11 Q. Okay. So it's my understanding now that  
12 the IDT Winstar acquisition corporation is going  
13 to be capitalized with an additional 30 million,  
14 so there will be 60 million in the escrow;  
15 correct?

16 A. Yes.

17 Q. Do you know how soon the prepayments are  
18 going to begin to the carriers?

19 A. I hope tomorrow.

20 Q. Do you know the amounts that are going to  
21 be paid to any particular carrier? Is there a  
22 schedule somewhere?

23 A. I saw the people. Not everybody at  
24 Winstar was forth coming in the due diligence with

1 every single thing we wanted, maybe because they  
2 had a big cutback of people and they had a lot of  
3 people up there, and they didn't know who was  
4 serious and who wasn't serious, and so forth.

5 But my general -- I do know  
6 generally how much people are owed. And I do know  
7 that your company is owed about \$2.4 million a  
8 week. So I assume that tomorrow we'll send you  
9 the check for \$600,000.

10 I also know that you guys are  
11 carrying the long distance for Bell South and that  
12 we're going to be carrying the international part  
13 of the business for singular. And that our two  
14 companies are meeting to work out the arrangement  
15 so that as Bell South hands you the long distance,  
16 you give us the international. So we bear the  
17 risk of that.

18 Q. So it's your testimony that the  
19 prepayments will begin either tomorrow or  
20 Thursday?

21 A. As soon as we close the deal.

22 Q. And scheduled closing is when?

23 A. When the judge says we can close. I'm  
24 ready to close tonight.



1 Q. All right. And it's your testimony that  
2 the amount to be prepaid to Williams for the first  
3 week is, approximately, \$600,000?

4 A. Approximately, \$600,000. If we're short  
5 by \$25,000 the first week because we screwed up,  
6 we'll make it up the second week.

7 MR. TURNER: Thank you.

8 THE COURT: Any other examination?

9 BY MR. LADDIN:

10 Q. Mr. Jonas, I'm Darryl Laddin. I  
11 represent Verizon.

12 A. Right.

13 Q. Hi. I just have a couple of questions  
14 for you.

15 A. All right.

16 Q. I think you said earlier in your  
17 statement that at some point in time you changed  
18 your mind with respect to this acquisition and  
19 rather than buying it as a company that was going  
20 to be liquidating, --

21 A. Yes.

22 Q. -- you decided to, I think you said, try  
23 to run it, try to run the company and make it  
24 profitable. Is that right?

1 A. That is right.

2 Q. So you basically want to operate the  
3 company as a going concern; is that right?

4 A. That's correct.

5 Q. And it wouldn't do that because you think  
6 the company will ultimately be profitable and IDT,  
7 therefore, will make a profit; right?

8 A. We're not giving charity, yeah.

9 Q. If the company had stopped service prior  
10 to today to the company, to its customers, --

11 A. Yes.

12 Q. -- IDT wouldn't have that opportunity to  
13 operate the company as a going concern; is that  
14 true?

15 A. That's true.

16 Q. So the service that Verizon, for example,  
17 has provided to date has enabled IDT to have the  
18 opportunity to acquire Winstar as a going concern  
19 and potentially make a profit; correct?

20 A. Can I say a couple of things about that  
21 because, I mean, I do see where you're going.  
22 Yes, I agree with you. Okay.

23 But, look, if the sun didn't shine  
24 this morning, if the sun never shined, I wouldn't

1 be able to operate my business because it would be  
2 the ice age.

3 I don't know that I have to send a  
4 check to God every day because of like what  
5 happened in the past. I mean, I'm coming in at  
6 this moment.

7 The second thing, we're carrying 20  
8 percent of all of your long distance traffic. You  
9 can call your office and check. But we deal with  
10 the center out in New Jersey that if -- I forget  
11 the person. We're carrying at least 20 percent of  
12 your business and you guys are committing for us  
13 to go like way up above that.

14 So we're not, you know, hostile  
15 people to Verizon. You have told us that you're  
16 going to be our largest customer.

17 I don't -- I don't think that I'm  
18 responsible for the debt that was run up prior to  
19 being taken -- to being able to take the company  
20 over because that made it possible for there to be  
21 a company to be taken over because we calculate  
22 all that into the price. But there's no way that  
23 we can run this business without doing business  
24 with you. You know, you specifically.

1                   And I think that you'll make a very  
2 good profit on us going into the future, and I  
3 think it will more than make up for any losses  
4 that you had in the past.

5           Q.     Do you know how much the current monthly  
6 run rate is, charges that are owed by the Debtor  
7 to Verizon?

8           A.     I don't know, but if you tell me it would  
9 be interesting.

10          Q.     If I told you that it was about a million  
11 and a half dollars a month?

12          A.     That sounds about right.

13          Q.     And are you willing to prepay to Verizon  
14 based on a million and a half dollars a month?

15          A.     Yeah. There's no choice.

16          Q.     So if I hear you correctly, then, as soon  
17 as you close, Verizon would receive a wire  
18 transfer payment for a week's worth of service?

19          A.     Right.

20          Q.     Prepaid?

21          A.     Right.

22          Q.     Based on a monthly run rate of a million  
23 and a half dollars?

24                   MR. ALBALAH:     I don't believe

1 that's his testimony. Mr. Jonas asked counsel --

2 THE WITNESS: It's okay. I  
3 understand the question.

4 That's basically correct. I mean, I  
5 would assume that after a few weeks it's possible  
6 that we could talk to, you know, the president of  
7 Verizon, like I said, and say, look, we're doing a  
8 lot of business together, like, do you mind if we  
9 just send you a check with everybody else.

10 I can't imagine, if we're going to  
11 be in Columbia saying, No, you have to send me a  
12 wire because I don't trust you. But if he does,  
13 I'll send you through the wire.

14 MR. LADDIN: I have no further  
15 questions. Thank you.

16 BY MR. GWYNNE:

17 Q. Good afternoon, Mr. Jonas. Kurt Gwynne  
18 on behalf of MCI WorldCom, Inc.

19 MR. GWYNNE: Can I have a document  
20 marked? I promise it will be brief.

21 THE COURT: I don't have anybody  
22 here to mark it. You can take one of those little  
23 stickers there and stick it on there, right to the  
24 left. I'm sorry.

1 (A document was marked as MCI  
2 Exhibit No. 1 for identification.)

3 THE COURT: Just mark it MCI-1.

4 MR. GWYNNE: Thank you.

5 THE COURT: And then you could give  
6 it, when you're finished, to the court reporter to  
7 append to the transcript.

8 MR. GWYNNE: May I hand it to the  
9 witness, Your Honor?

10 THE COURT: Yes, you may.

11 MR. GWYNNE: Thank you.

12 THE WITNESS: Want me to read this  
13 whole thing?

14 BY MR. GWYNNE:

15 Q. Could you please turn to Page 2,  
16 Mr. Jonas?

17 A. Okay.

18 Q. Do you see the third full whereas clause?

19 A. Whereas of the petition date, the MCI  
20 accounts have an aggregate unpaid; is that the one  
21 you're talking about, that paragraph?

22 Q. Yes.

23 A. Right.

24 Q. Can you read that out loud?

1           A.     Whereas of the petition date, the MCI  
2 accounts had an aggregate unpaid balance in the  
3 amount of \$21,300,000. Furthermore, the Debtors'  
4 consumption of the service provide service as a  
5 result in monthly charges on the MCI account in  
6 the amount of \$4,586,406 per month.

7           Q.     And is the purchaser prepared to make a  
8 payment to WorldCom based on that monthly usage at  
9 closing?

10          A.     Yeah. Yes.

11                     And you can call Scott Sullivan and  
12 Bernie Ebrose (phonetic), and they will tell you  
13 that they will take my word for it.

14                    MR. GWYNNE:    Your Honor, I have no  
15 further questions, but I would lake to move the  
16 admission of this document into evidence as our  
17 Adequate Assurance Stipulation signed by Your  
18 Honor earlier in the case.

19                    THE COURT:     It can be admitted for  
20 the purpose of this hearing. It's also admitted  
21 if you'll pass it to the court reporter.

22                    MR. GWYNNE:    Yeah.

23                    THE COURT:     Any other examination  
24 of the witness?

1 BY MS. SAWCZUK:

2 Q. Maria Sawczuk on behalf of Espire  
3 Communications.

4 Sir, you testified that you were  
5 thinking about running the company. Now, Espire  
6 is a small player in this, and my question to you  
7 is: Are you planning to continue service with  
8 Espire, continue being a customer with Espire?

9 A. I don't know what you do, but...

10 Q. Espire is also a service provider. We're  
11 the one in bankruptcy at this point.

12 A. No, I understand, but I'm not sure what  
13 kind of service it is that you provide.

14 Q. Okay.

15 A. How much -- well, if you tell me what it  
16 is that you provide and what you charge, I could  
17 probably give you a quick answer.

18 MS. SAWCZUK: Your Honor, I don't  
19 know that I'm able to testify as to what we  
20 provide.

21 THE COURT: You can tell the  
22 witness if you know. Do you know?

23 MR. SAWCZUK: I know that we  
24 provide about, I think it's a -- the run rate is



1 about 30,000 a week, so -- or no, about 300,000 a  
2 month. So we're a small player in this. We're  
3 not in the million dollars.

4 We provide similar services. I  
5 think we have a telelocation, but I'm not  
6 positive.

7 THE WITNESS: Let me answer the  
8 question in a way that's not complete. In a  
9 month, it will take us at least a month to figure  
10 out, you know, particularly on something that's  
11 \$30,000, a week.

12 BY MS. SAWCZUK:

13 Q. No, 300,000 a month is what it is.

14 A. 300. That's not going to be the first  
15 thing that we're going to look at. So, yes, we  
16 are planning to pay you next week and probably for  
17 the next month, and probably for the next several  
18 months, because I don't think that, you know -- I  
19 don't know of anybody that provides service -- I  
20 don't know what you provide.

21 Q. One thing that may clear it up, I think  
22 we only provide service in Tucson -- Albuquerque,  
23 Tucson and Dallas. Are you planning to continue  
24 service in those areas at this point, to your

1 knowledge?

2 A. At this point, to my knowledge, I think  
3 so, but we need to go into -- let's say  
4 hypothetically that there are no customers in  
5 Albuquerque, that's probably not a good market for  
6 us. So I would, obviously, you know, pay you and  
7 tell you that we don't need the service in that  
8 city if that were the case.

9 In Dallas, a major city, you know,  
10 so obviously, you know you're going to want to  
11 have the services.

12 MS. SAWCZUK: I have nothing  
13 further, Your Honor.

14 THE COURT: All right. Other than  
15 how much folks might get paid, any other area that  
16 anyone would like to examine Mr. Jonas on?

17 (Silence.)

18 THE COURT: All right. Thank you,  
19 Mr. Jonas. You may step down.

20 Is there any argument in -- I think  
21 I heard the Debtor and now we've heard the  
22 purchaser. Is there any argument in opposition to  
23 the sale motion?

24 MR. SHAPIRO: Your Honor, just for

1 the record, though, I'd just like to make note  
2 that we were approached by a potential bidder just  
3 a few minutes before the hearing started. I  
4 wanted to bring Your Honor's attention to it  
5 because we are considering this bid to make sure  
6 that we considered any higher or better offers.

7 I just wanted to make sure that Your  
8 Honor was aware that someone had approached us  
9 moments before this.

10 THE COURT: Sounds like they have  
11 to have an open checkbook.

12 MR. SHAPIRO: I think that's right.  
13 And based on what they told us in terms of  
14 availability of money, it wasn't immediate in the  
15 sent of Mr. Jonas' company being willing to be  
16 able to fund it all tomorrow at a closing. They  
17 told us they could not close for at least 10  
18 days. They have a check for \$5 million.

19 THE COURT: Okay. You don't have  
20 to give me the details. I mean, the sale that's  
21 now proposed is a sale with a settlement  
22 immediately or closing immediately.

23 MR. SHAPIRO: Right.

24 THE COURT: The testimony is that

1 this is truly going to be a going concern. That's  
2 what I mean, you may want to modify it. Mr. Jonas  
3 intends to have the company moving forward, not to  
4 close it down, that would operate the company.

5 MR. SHAPIRO: I agree. I just  
6 wanted to bring it to the Court's attention  
7 because I wanted the record to be complete.

8 GUY: So here I am, the potential  
9 competitive bidder.

10 I will say that I'm very pleased  
11 that Howard doubled the amount of money that he  
12 put in escrow to pay future bills. That's  
13 certainly a good thing for certainly everybody at  
14 this table. It makes them feel better in light of  
15 the circumstances, and I'm particularly pleased  
16 that he has committed to run the company as a  
17 going concern last night.

18 I was particularly concerned because  
19 it was quite clear to me he planned to liquidate  
20 the business relatively rapidly and from my point  
21 of view, that was not an acceptable alternative,  
22 which is why I spent the last 24 hours cobbling  
23 together this bid, which may appear to be  
24 inadequate compared to his.

1 THE COURT: I don't mean to  
2 interrupt you, but could you introduce yourself,  
3 please.

4 MR. ROUHANA: Sorry about that.  
5 Bill Rouhana, R-O-U-H-A-N-A. I'm the former  
6 chairman and CEO with Star Communications.

7 THE COURT: Thank you.

8 MR. ROUHANA: And my bid is made on  
9 behalf of a number of different people. And Mark  
10 did correctly outline some of the drawbacks in  
11 it.

12 I do think it has some particularly  
13 different positives that are necessary to be  
14 thought about. Let me just outline it for you  
15 briefly so you know what it is.

16 In essence, it's a \$95 million bid  
17 accommodation of cash and notes that we're  
18 proposing to make as well as 15 percent of the  
19 equity of our new company that we want to  
20 distribute to existing creditors.

21 \$30 million in cash would be paid,  
22 in our minds, primarily to the DIP banks as well  
23 as 10 percent of the company.

24 We would propose to take -- to

1 identify right now or by closing, which would be  
2 relatively quickly, although not as quick as  
3 Howard's closing, the contracts we would assume.  
4 And so everyone would know what we were assuming  
5 and we would pay the prepetition cure payments as  
6 well as additional -- make an additional  
7 contribution to some of the past incurrences by  
8 the administrative creditors.

9                   And we would allocate 25 million in  
10 notes to that, as well as five percent of the  
11 equity of the business.

12                   Now, our estimate right now of the  
13 prepetition assumption is about a little less than  
14 20 million, although I think we can get that  
15 lower. So \$5 million of our 20 million in notes,  
16 plus five percent of the equity would be available  
17 for administrative claimants who were otherwise  
18 not going to be paid in this proposal.

19                   And then, finally, we would have \$40  
20 million working capital available on closing, and  
21 I could, in fact, answer most of the questions  
22 that anyone would like to ask about burn rate, et  
23 cetera, having the knowledge of the business that  
24 I do have. And I could -- I think I could

1 demonstrate, at least to some degree, that at  
2 least, in my opinion, the \$40 million is enough to  
3 operate the business the way I would operate it  
4 going forward.

5                   There was a couple of the little  
6 differences between our bid and the IDT bid and  
7 that we would not -- we would want to satisfy  
8 Velocita, PSI net assets. These are three assets,  
9 which I believe -- assets which I believe the  
10 Debtor has minimal value attached to, but which  
11 have a considerable amount of value to the going  
12 concern that Winstar would be with our bid  
13 accepted.

14                   Now, the funding for our bids does  
15 not come from the Far East or Europe or any place  
16 other than a very foreign place called New York  
17 City. It is from money that comes from my family  
18 from personal friends who have signed subscription  
19 agreements as well as a couple of well-known  
20 investors who run the Goldman Family Real Estate  
21 holdings.

22                   And that is supplemented by \$30  
23 million. Serbris (phonetic) is a well-known  
24 investor in distressed assets who is providing us

1 with a working capital line that the \$25 million  
2 note would be subordinated to, and therefore would  
3 be behind.

4 But that money, we have a commitment  
5 letter from Serbris, which we could certainly  
6 provides to the court we have a five million  
7 dollar check sitting in my partner's office in New  
8 York, which is available for delivery to Sherman &  
9 Sterly. It didn't get cut until I was on my way  
10 down here this afternoon, so it hasn't been  
11 delivered yet. But it can be delivered  
12 immediately.

13 It's a bank check from a New York  
14 bank. I am sure it will be an acceptable bank to  
15 the Debtor, and the rest of the money could be put  
16 in place along with in time for a closing, I would  
17 say, usually five days, but it just happens that  
18 we're about five days from Christmas. So I think  
19 it would take us about eight or nine days to  
20 close.

21 That is the competitive bid. I do  
22 think it is a higher and better offer. While the  
23 \$60 million does represent an open checkbook going  
24 forward, it really doesn't take into account the



1 charges that have been incurred by the estate  
2 while it's been in Chapter 11.

3 And we try to address those as well  
4 as identify the prepetition cure that is needed to  
5 be made right up front so that everyone is aware  
6 of where they stand. I think that is in many  
7 ways, superior to the offer that's on the table.

8 Now, I know the Debtor in the  
9 hallway said that was not a superior offer, but  
10 you know, \$95 million is, I think, more than 70  
11 million, and I don't know what I'm going to do  
12 with this last 30 that Howard threw on the table  
13 just now. But those are for future bills to be  
14 incurred, not for existing ones.

15 I would urge you to at least take a  
16 moment and understand our offer, and ask any  
17 questions, and give us the opportunity to  
18 demonstrate our ability to close.

19 THE COURT: All right. Are there  
20 any questions?

21 MR. GWYNNE: Your Honor, I don't  
22 have any questions, but as one of the carriers who  
23 would presumably receive some of the benefits of  
24 the \$21 million note and whatever else, I would

1 like the Court to consider this.

2                   Maybe we could take a break and have  
3 an opportunity to talk to him a little further  
4 about that proposition. It's really our money  
5 that's being forgotten about in this case, you  
6 know, for the arrearages that have existed up  
7 until now.

8                   And if someone is willing to pay  
9 them, we certainly think that, from our  
10 perspective, or at least from my client's  
11 perspective, that may be a better deal, something  
12 we'd like to explore if we could.

13                   THE COURT:   Anyone else have any  
14 examination?

15                   MR. LADDIN:   Darryl Laddin on  
16 behalf of Verizon. We agree with Mr. Gwynne's  
17 comment. We'd like to hear more about this  
18 potential bidder.

19                   THE COURT:   Anyone else?

20                   MR. KAROTKIN:   Your Honor, I'm not  
21 sure exactly what arrearages people are talking  
22 about. And if they're talking about something  
23 other than in connection with cure payments on  
24 assumed and assigned agreements, I think that my

1 client has earned title to the first dollars.

2 MR. GWYNNE: There may be more  
3 dollars that there are in the IDT offer, so it  
4 sounds like he's interested in considering it as  
5 well.

6 MR. KAROTKIN: I didn't say that.

7 MS. NEWELL: Your Honor, I would  
8 rather not make a comment about this offer at this  
9 time, but before you close the microphone on the  
10 sale in general, I'd like to make a couple  
11 comments.

12 THE COURT: All right. We can do  
13 that. I don't think there's any other comments on  
14 this proposal.

15 There are.

16 MR. LADDIN: Darryl Laddin on  
17 behalf of Verizon. In reference to what  
18 Mr. Karotkin had to say, I respectfully disagree  
19 with his view of who would be entitled to initial  
20 procedure. Your Honor entered an order under  
21 Section 366 earlier in the case and that order  
22 specifically provides that no other entity is  
23 entitled to a claim that is senior in prior to  
24 Verizon unless Verizon is paid in full.

1                   Verizon is owed \$5 million in this  
2 case in administrative charges that remain  
3 unpaid. If this man is coming in and offering to  
4 pay some of those charges, we'd like to hear about  
5 it. That would make a big difference to Verizon.

6                   THE COURT:     Anyone else?

7                   (Silence.)

8                   THE COURT:     All right. Thank you.

9                   Did you want to make your comment?

10                  MS. NEWELL:    Thank you, Your  
11 Honor. I just wanted to state for the record the  
12 proposed sale order that we have had a chance to  
13 read by now for the United States is acceptable  
14 with respect to the proposed sale that we came in  
15 to court about today.

16                  The FCC is pleased that it appears  
17 that the customers are going to continue to  
18 receive telephone service until they can get a  
19 chance to either transition or go forward with the  
20 new purchasing company.

21                  I did want to state that one thing  
22 that might not be all that clear in the proposed  
23 order is that one of the terms in the purchase  
24 agreement about the sale to the proposed purchaser

1 is that any sale would be subject to the FCC  
2 approval process for assignment of licenses.  
3 That's in the purchase agreement, and it's  
4 referenced in the sale order, but I just wanted to  
5 make it clear for the record that that's something  
6 that's critical to the United States on having and  
7 not having an objection to the sale.

8 Thank you, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. SHAPIRO: Just on that point,  
11 the record is clear that any licenses that are to  
12 be transferred that are FCC governed licenses  
13 require the consent of the FCC contract. I think  
14 that makes that very clear.

15 MR. KAROTKIN: First of all, so the  
16 record is clear as to what the gentleman from  
17 Verizon said, there is an order entered in the  
18 beginning of the case approving the IDT loan that  
19 no other creditors could get any liens or claims  
20 prior to the DIP loan.

21 So this court order is very clear on  
22 that issue, and that was entered, as I said, in  
23 the beginning of the case, so I don't know what  
24 order he's talking about. But that would

1 certainly have contravened a prior order of this  
2 court.

3 I would also like to note for  
4 Mr. Rouhana, you think he's talking about closing  
5 in a week to ten days if he's able to get together  
6 everything. Perhaps he could state so everybody  
7 understands who bears the cost of the operations  
8 on keeping the system going pending that week to  
9 ten-day period.

10 THE COURT: Mr. Rouhana, that is  
11 the obvious question. I think the other question  
12 ought to be the conditions there are to our  
13 closing so that everybody is fully aware.

14 MR. ROUHANA: The way I would  
15 anticipate doing it is assuming that the  
16 representatives of people that have to make that  
17 decision decide our offer was better, I would ask  
18 them to work with us for this week or until the  
19 time, and I would tell them the conditions of our  
20 offer and proposal. And so long as they were  
21 voluntarily willing to do it, I would say that  
22 that would be my approach to the process.

23 They would get more. We would pay  
24 them from this date forward, but we would need to

1 close before we paid them as far as the  
2 conditions, so that they're fully disclosed.

3           There are two conditions to my  
4 financing, both of which I view as academic, but  
5 necessarily the case. One is that the companies  
6 receivables actually exist as represented by the  
7 company. I know for a fact that they do, but the  
8 lender needs to verify that.

9           And the second thing is that the  
10 inventory that is sitting in our warehouse has to  
11 be in accordance with what's represented by the  
12 company. I know for a fact that that's the case  
13 as well, but our lender needs to verify that as  
14 well.

15           Those are our two conditions. There  
16 are no other conditions to the closing.

17           And so it's really a matter of  
18 getting the paperwork done and putting everything  
19 in place. We should be able to demonstrate that  
20 to everybody's satisfaction, if you give us a few  
21 minutes to try to do that. And I think that's the  
22 right result.

23           I recognize that this is an issue,  
24 but I think everybody gets more money who has to

1 work with us if they choose to do it voluntarily.  
2 I don't see why that would be a problem.

3 MR. KAROTKIN: Just for the record,  
4 there are other costs besides the carrier costs  
5 over the week or ten days that -- there are  
6 employee costs. There are a number of other  
7 costs.

8 I think he already addressed the  
9 landlords. I would also like to point out, Your  
10 Honor, that, again, under the terms of the order  
11 approving the DIP credit agreement and the other  
12 DIP agreement in order for the assets to be sold  
13 on to any party, it's subject to the consent of  
14 the DIP lenders.

15 MR. ROUHANA: I don't know if you  
16 want to ask them if they want to try.

17 THE COURT: Well, let me hear  
18 everybody first and then I'm going to close the  
19 sale motion.

20 MR. GARBER: Good afternoon, Your  
21 Honor. Aaron Garber for Cisco. As I was stating  
22 earlier, our issues are slightly different. We're  
23 an equipment lessor to the Debtor. We lease to  
24 the Debtor switches, routers and gateways, which



1 the Debtors use in the operation of their  
2 business.

3 And all of this equipment is used on  
4 software, which is also provided by Cisco. And we  
5 have a couple concerns with respect to the sale.

6 First, as so many others, the  
7 Debtors have not satisfied they're administrative  
8 obligation under 365(d) 10, so we didn't believe  
9 that they have the right to give this equipment to  
10 a buyer even for a short period of time until  
11 they've met their administrative burdens.

12 More importantly, under case law,  
13 you are not allowed to assume and assign  
14 intellectual property software licenses without  
15 the consent of the licensor. And there's two  
16 things going on with the sale.

17 First of all, the Debtors have not  
18 sought our consent to assume and assign to --  
19 basically to assign to the purchaser the software  
20 licenses, which runs this equipment. Basically,  
21 this equipment would be non-functioning without  
22 the software.

23 So we really have two concerns.  
24 First of all, there's an issue with respect to

1 this 120 days that the buyers, just letting them  
2 use this equipment. We don't know anything about  
3 the buyers, you know. We don't know if they're a  
4 competitor, if they should have access to this  
5 software.

6 We're also concerned that if we  
7 start liquidating property where exactly our  
8 license and our software and license, who they  
9 would be going to.

10 MR. JONAS: Can I say something  
11 about that?

12 MR. GARBER: Can I finish?

13 MR. JONAS: We own -- we're the  
14 people that make a lot of the Cisco software.  
15 We're your partners.

16 MR. GARBER: That's what I'm  
17 saying. I don't know if that's true or not true  
18 or how Cisco feels about it.

19 MR. JONAS: I'll affirm that that's  
20 the case.

21 THE COURT: Sounds like that would  
22 be something to discuss in that 120 days, and I  
23 assume that the buyer would pay whatever usage  
24 cost there is while that was flushed out.

1 MR. JONAS: That's true.

2 MR. GARBER: That is fine, Your  
3 Honor.

4 THE COURT: I don't think anybody  
5 in the courtroom doesn't understand that you can't  
6 assume and assign the software, but in that 120  
7 days that all may be worked out. I don't think it  
8 was a definitive enough view as to exactly what  
9 the mix will be in the transaction to be able to  
10 decide that today. But the money issue, I think,  
11 is pretty clear.

12 MR. JONAS: I will tell you that we  
13 deal with Cisco all the time and that we're 80  
14 percent owners of the -- 20 percent owners and  
15 that's what makes the vipers, all the routers,  
16 so...

17 THE COURT: Sounds like he owns  
18 your software.

19 MR. GARBER: It does, but...

20 THE COURT: So he'll probably make  
21 a pretty good agreement with himself.

22 MR. GARBER: Just so that our  
23 rights are reserved.

24 THE COURT: I understand. Just so

1 it's understood, but I think in that 120 days it's  
2 probably going to get worked out that they are if  
3 they're the successful bidder.

4 MR. ROUHANA: Your Honor, just one  
5 thing.

6 THE COURT: You have that same  
7 problem.

8 MR. ROUHANA: I just want to make  
9 one comment if you wouldn't mind. My whole point  
10 of being able to identify prepetition contracts  
11 and capital leases that we would assume would  
12 obviate this problem for the software vendors, and  
13 therefore, for the court.

14 Because we do know, given our  
15 familiarity with the business, what contracts we  
16 would assume, and therefore, what would need to be  
17 paid.

18 THE COURT: All right. Anyone else  
19 want to be heard?

20 MR. SHAPIRO: Your Honor, I just  
21 wanted to respond to a point that counsel for  
22 Cisco Company made. Just for the record, counsel  
23 suggested that the software likenesses could not  
24 be transferred without consent. The Debtors don't

1 agree with the software license under the case  
2 law.

3 And therefore, while I don't know  
4 what particular software licenses Cisco has, --

5 THE COURT: I assume it's  
6 patent-licensed property.

7 MR. SHAPIRO: I am not sure. I'd  
8 just reserve our rights to contest it if it ever  
9 is.

10 THE COURT: If it is what he thinks  
11 it is, you would agree that it's not assumable and  
12 assignable.

13 MR. SHAPIRO: It may require  
14 consent depending on the nature of the license.

15 THE COURT: Okay.

16 GUY: Good evening, Your Honor.  
17 For the record, Michael Chipman on behalf of  
18 Microsoft.

19 First, I want to ask: Do you own  
20 Microsoft?

21 MR. JONAS: We own Microphone and  
22 we are the exclusive VIP vendor.

23 MR. CHIPMAN: May I ask a further  
24 question of the purchaser?

1 THE COURT: Yes.

2 MR. CHIPMAN: Are you familiar with  
3 the licenses that Winstar has with Microsoft?

4 THE WITNESS: I'm not familiar with  
5 the specific licenses, but I know we pay like a  
6 fortune in licenses to Microsoft every month.

7 MR. CHIPMAN: Do you know what the  
8 burn rate is for Microsoft at all?

9 MR. JONAS: I don't know, but I  
10 cannot imagine how it could possibly run the  
11 company without Microsoft. And by the way I can't  
12 imagine how we could run it without Cisco.

13 MR. CHIPMAN: Your Honor, just for  
14 the record, we do have an objection to the sale to  
15 the extent that the Debtors are trying to sell,  
16 transfer or assign any Microsoft property,  
17 independent property licensed software.

18 Obviously, all the computers have  
19 Microsoft software on them, and we have provided  
20 proposed language for the order and didn't know if  
21 the purchaser would be willing to put that in the  
22 order to protect Microsoft.

23 It was in our motion. It basically  
24 says you're not buying Microsoft software, that

1 it's either got to be deleted or a new arrangement  
2 has to be worked out.

3 MR. SHAPIRO: Your Honor, the  
4 purchase agreement does not provide for the  
5 transfer of any executory contracts. I would  
6 assume not having read my license agreements, that  
7 their executory contracts as we all discussed  
8 during the 120-day period, they will make a  
9 determination as to whether or not they need that  
10 software or not.

11 It sounds like Mr. Jonas believes  
12 they do, but he hadn't determined that because he  
13 doesn't know what it is. And in the meantime he  
14 will have to pay whatever it is that -- my charges  
15 for that software and do it on a prepaid business,  
16 if that's what they require.

17 THE COURT: The proposed agreement  
18 will, again, flush that out, and if there's a  
19 dispute, we'll come back.

20 MR. KAROTKIN: The proposed  
21 agreement in the order here says the seller, it  
22 says it sells what it owns. If he doesn't own it,  
23 he's not selling it.

24 THE COURT: That's what I am

1 saying, during this period of time, there will be  
2 that examination. If there's a problem, then I'm  
3 sure it will come back.

4 MR. CHIPMAN: Could the Debtors  
5 tell us how much they've been paying to Microsoft  
6 weekly? Do they know?

7 THE COURT: A lot of money, I  
8 guess. No. Oh, no, that was for another  
9 business.

10 MR. CHIPMAN: Our understanding is  
11 they haven't paid anything.

12 THE COURT: But the objection is  
13 that they can't sell your software, and that's not  
14 happening. If you have those rights that you  
15 assert, they won't be able to sell it.

16 MR. CHIPMAN: Today they're not  
17 selling any Microsoft software. That has to be  
18 worked out later.

19 THE COURT: Again, if your position  
20 is right, that will be worked out later.

21 MR. CHIPMAN: I understand, Your  
22 Honor.

23 MR. ROSENTHAL: Good evening, Your  
24 Honor. Edward Rosenthal on behalf of Advanced



1 Fibre Communications. I would reiterate the  
2 comments made by the representative from Cisco.

3 We have a very similar situation  
4 with similar products and software. We would  
5 simply reserve our rights as well. It appears  
6 with our limited objection that we're not  
7 necessarily directly affected by the sale, but we  
8 reserve our rights during that 120-day period.

9 Thank you.

10 MS. HARNER: Good evening, Your  
11 Honor. Michelle Morgan Harner of Jones Day on  
12 behalf of Lucent Technologies.

13 Your Honor, Lucent is a secured  
14 creditor in this case with a secured claim in  
15 excess of \$800 million. The equipment and other  
16 assets securing Lucent's claim against the Debtors  
17 constitute a substantial portion of the assets  
18 that the Debtors are proposing to sell here  
19 today.

20 In fact, Your Honor, Lucent's  
21 interest in those assets are not primed by the DIP  
22 lenders under Your Honor's order.

23 Although Lucent doesn't oppose a  
24 sale of the Debtors assets, they do have certain

1 concerns. And despite the size of Lucent's claim,  
2 and despite the fact that Lucent was not included  
3 even on a consultation basis in the sale process,  
4 Lucent has cooperated with the Debtors and the  
5 secured lenders throughout the sale process.

6 To protect its interests, it is a  
7 secured party in interest in this case, Lucent did  
8 file a limited objection to the proposed sale.  
9 The proposed order circulated earlier today, at  
10 least the last draft that I saw, did address some  
11 of Lucent's issues.

12 But there were some that were not  
13 addressed. And in particular, Your Honor,  
14 although I'll be very brief, I would like to raise  
15 five issues with Your Honor to consider.

16 First, Your Honor, Lucent asked that  
17 the sale proceeds be escrowed. An order of this  
18 court was entered determining all of the rights,  
19 interest, and claims asserted by the secured  
20 parties in the sale proceeds.

21 The proposed order does include  
22 language that goes to that comment. It provides  
23 that the sale proceeds will be held until an order  
24 of this court is entered and parties are given

1 notice and an opportunity to be heard.

2           So long as that type of provision is  
3 included in the sale order where all parties are  
4 given notice and opportunity to be heard prior to  
5 distribution of the sale proceeds, Lucent believes  
6 that that concern is satisfied.

7           Second, Your Honor, Lucent noted in  
8 its objection that there are certain lab equipment  
9 that it owns and certain accounts in which it has  
10 a security interest and which were converted into  
11 block accounts prior to the petition date that  
12 should be excluded from the sale assets in  
13 Paragraph 11 of the proposed order.

14           And again as the last draft that I  
15 saw, the lab equipment and the accounts were, in  
16 fact, excluded from the sale assets. However,  
17 Exhibit A and Exhibit B, which purportedly list  
18 the lab equipment and the accounts were not  
19 circulated with the proposed order, so I simply  
20 would like the Debtors to confirm on the record  
21 that the equipment and the accounts to be listed  
22 on Exhibit A and Exhibit B to the order would be  
23 identical to the equipment and the accounts listed  
24 on Exhibits A and B to Lucent's objection to the